



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-130]

Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain walk-behind lawn mowers and parts thereof (lawn mowers), from the People's Republic of China (China). The period of investigation is January 1, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Moses Song or Tyler Weinhold, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-7885 or (202) 482-1121, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this

investigation on June 22, 2020.¹ On August 3, 2020, Commerce postponed the preliminary determination of this investigation to October 23, 2020.² For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.³ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are lawn mowers from China. For a complete description of the scope of this investigation, *see* Appendix I.

At the time of the filing of the petition, there were ongoing antidumping (AD) and countervailing duty (CVD) investigations on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines), from China.⁴ The scope of the small vertical engines from China investigations covers engines “whether mounted or unmounted, primarily for

¹ *See Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 85 FR 37426 (June 22, 2020) (*Initiation Notice*).

² *See Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 85 FR 46587 (August 3, 2020).

³ *See* Memorandum, “Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *See Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 52086 (August 24, 2020); *see also Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 85 FR 66932 (October 21, 2020).

walk-behind lawn mowers. Engines meeting this physical description may also be for other non-handheld outdoor power equipment, including but not limited to, pressure washers.” The small vertical engines scope also provides that “if a subject engine is imported mounted on such equipment, only the engine is covered by the scope. Subject merchandise includes certain small vertical shaft engines produced in the subject country whether mounted on outdoor power equipment in the subject country or in a third country.”⁵ This creates an overlap between the scopes of these proceedings.

Therefore, for the purpose of Customs and Border Protection (CBP)’s administration, where the engine of a lawn mower is also covered by the scope of the small vertical engines from China CVD proceeding, parties are instructed to enter their merchandise under the CVD case number associated with the small vertical engines proceedings (C-570-125) and post CVDs in accordance with the cash deposit rates applicable in that case. Specifically, at this time, the CVDs will be applicable to the value of the small vertical engine, not the residual value of the mower. We are making no change to the scope of this proceeding at this time. As discussed below, we will be setting aside a separate period of time for parties to comment on this issue.

Scope Comments

In accordance with the preamble to Commerce’s regulations,⁶ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁷ No interested parties timely commented on the scope of the investigation and thus Commerce is not changing the scope language as it appeared in the *Initiation Notice*.⁸

⁵ *Id.*

⁶ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁷ See *Initiation Notice*.

⁸ On September 23, 2020, Ningbo Daye requested permission to file comments on the scope language in the *Initiation Notice*. Commerce rejected this request because it was submitted after the deadline.

Commerce will be setting aside a separate period of time for parties to comment on the issue of the overlap in the scopes of the lawn mowers and small vertical engines AD and CVD proceedings.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.⁹

In making these findings, Commerce is relying, in part, on facts available. Because we find that one or more respondents failed to cooperate by not acting to the best of their ability to respond to Commerce’s requests for information, Commerce drew an adverse inference where appropriate in selecting from among the facts otherwise available.¹⁰ For further information, *see* “Use of Facts Otherwise Available and Adverse Inferences” in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of lawn mowers from China based on a request made by the petitioner.¹¹ Consequently, the final CVD determination will be issued on the same date as the final AD

⁹ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

¹⁰ See sections 776(a) and (b) of the Act.

¹¹ See Petitioner’s Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Walk-Behind Lawn Mowers from China: Request to Align Final Countervailing Duty Determination with the Companion Antidumping Duty Final Determination,” dated October 15, 2020.

determination, which is currently scheduled to be issued no later than March 8, 2021, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated individual estimated countervailable subsidy rates for Ningbo Daye Garden Machinery Co., Ltd. (Ningbo Daye) and Zhejiang Amerisun Technology Co. (Zhejiang Amerisun) that are not zero, *de minimis*, or based entirely on facts otherwise available. Commerce calculated the all-others rate using the mandatory respondents' publicly ranged U.S. export sales values for the subject merchandise.¹²

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

¹² We calculated the all-others rate as the weighted average of the estimated subsidy rates for Ningbo Daye and Zhejiang Amerisun, using their publicly ranged U.S. export sales value for the subject merchandise because it is closer to the weighted average of the estimated subsidy rates calculated for the mandatory using their business proprietary export sales values than the simple average of the estimated subsidy rates.

Company	Subsidy Rate
Zhejiang Amerisun Technology Co., Ltd.	22.74 percent
Ningbo Daye Garden Machinery Co., Ltd. ¹³	14.68 percent
All Others	17.19 percent

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose to interested parties its calculations and analysis performed in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

¹³ Commerce preliminarily determines that the following company is cross-owned with Ningbo Daye Garden Machinery Co., Ltd.: Zhejiang Jindaye Holdings Limited. *See* Preliminary Decision Memorandum at 36. This rate applies to all cross-owned companies.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Commerce will notify interested parties of the deadline for the submission of case briefs. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹⁴ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain

¹⁴ See 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements); *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

of its requirements for serving documents containing business proprietary information, until further notice.¹⁵

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: October 23, 2020.

Jeffrey I. Kessler,
Assistant Secretary for Enforcement and Compliance.

¹⁵ See *Temporary Rule*.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain rotary walk-behind lawn mowers, which are grass-cutting machines that are powered by internal combustion engines. The scope of the investigation cover certain walk-behind lawn mowers, whether self-propelled or non-self-propelled, whether finished or unfinished, whether assembled or unassembled, and whether containing any additional features that provide for functions in addition to mowing.

Walk-behind lawn mowers within the scope of this investigation are only those powered by an internal combustion engine with a power rating of less than 3.7 kilowatts. These internal combustion engines are typically spark ignition, single or multiple cylinder, air cooled, internal combustion engines with vertical power take off shafts with a maximum displacement of 196cc. Walk-behind lawn mowers covered by this scope typically must be certified and comply with the Consumer Products Safety Commission Safety Standard For Walk-Behind Power Lawn Mowers under the 16 CFR Part 1205. However, lawn mowers that meet the physical descriptions above, but are not certified under 16 CFR Part 1205 remain subject to the scope of this proceeding.

The internal combustion engines of the lawn mowers covered by this scope typically must comply with and be certified under Environmental Protection Agency air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. However, lawn mowers that meet the physical descriptions above but that do not have engines certified under 40 CFR Part 1054 or other parts of subchapter U remain subject to the scope of this proceeding.

For purposes of this investigation, an unfinished and/or unassembled lawn mower means at a minimum, a sub-assembly comprised of an engine and a cutting deck shell attached to one another. A cutting deck shell is the portion of the lawn mower—typically of aluminum or steel—that houses and protects a user from a rotating blade. Importation of the subassembly whether or not accompanied by, or attached to, additional components such as a handle, blade(s), grass catching bag, or wheel(s) constitute an unfinished lawn mower for purposes of this investigation. The inclusion in a third country of any components other than the mower sub-assembly does not remove the lawn mower from the scope. A lawn mower is within the scope of this investigation regardless of the origin of its engine.

The lawn mowers subject to this investigation are typically at subheading: 8433.11.0050. Lawn mowers subject to this investigation may also enter under Harmonized Tariff Schedule of the United States (HTSUS) 8407.90.1010 and 8433.90.1090. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Injury Test
- V. Diversification of China's Economy
- VI. Use of Facts Otherwise Available and Adverse Inferences
- VII. Subsidies Valuation
- VIII. Benchmarks and Interest Rates
- IX. Analysis of Programs
- X. Calculation of the All-Others Rate
- XI. Recommendation

[FR Doc. 2020-24050 Filed: 10/29/2020 8:45 am; Publication Date: 10/30/2020]